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8 Integretel

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12  
13 THE BILLING RESOURCE, dba  
Integretel, a California corporation,

Case No. 07-CIV-5758-RMW

14 Debtor-Plaintiff-Appellee

15 v.

16 FEDERAL TRADE COMMISSION, et al.

17 Defendant-Appellant

18  
19 On Appeal from the United States Bankruptcy Court for the Northern District of  
California,  
20 No. 07-52890-ASW, Adversary Proceeding No. 07-5156

21 **DECLARATION OF STEVEN B. SACKS IN SUPPORT OF PLAINTIFF-**  
**APPELLEE THE BILLING RESOURCE, dba INTEGRETEL's OPPOSITION TO**  
**MOTION TO SHORTEN BRIEFING SCHEDULE AND ACCELERATE**  
**HEARING DATE**

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1 I, Steven B. Sacks, declare as follows:

2 1. I am an attorney duly admitted to practice in the State of California and  
 3 before this Court. I am a member of Sheppard, Mullin, Richter & Hampton LLP, counsel  
 4 to The Billing Resource d/b/a Integretel (“Integretel”).

5 2. Integretel opposes the Federal Trade Commission’s (“FTC”) motion to  
 6 shorten briefing schedule and accelerate hearing date (“Motion”) of the FTC’s motion for a  
 7 stay pending appeal. There is no urgency to having this motion heard on shortened time.  
 8 There is no reason this motion for a stay pending appeal has to be heard in conjunction  
 9 with the motion for stay pending appeal of the other preliminary injunction issued by the  
 10 bankruptcy court. Integretel’s time to prepare its opposition to the FTC’s motion should  
 11 not be abridged by expediting the briefing schedule to Integretel’s inconvenience and  
 12 disadvantage. The FTC’s motion does not comply with the Local Rules, as it is not  
 13 accompanied by a declaration required under Local Rule 6-3(a).

14 3. The FTC offers no basis for expediting the briefing schedule in this matter.  
 15 Instead the FTC’s Motion argues the merits and fails to offer any coherent rationale for  
 16 having an expedited hearing. The Motion notably fails to mention that there is no urgency  
 17 with regard to this appeal whatsoever as it does not disclose to the Court that in connection  
 18 with issuing the injunction at issue here, which prevents the FTC and the federal Receiver  
 19 from initiating contempt proceedings against Integretel, the bankruptcy court required  
 20 Integretel to retain \$1.7 million of Integretel’s funds in a blocked bank account pending  
 21 order of the court. The FTC and the Receiver are fully protected unless and until the  
 22 bankruptcy court orders release of that money—at which time they could seek appellate  
 23 review or a stay. The FTC has no cause to initiate contempt proceedings against  
 24 Integretel, as the funds it claims are being held pursuant to the bankruptcy court’s order.  
 25 Put another way, the preliminary injunction issued by the bankruptcy court maintains the  
 26 status quo and the FTC has no basis to alter it; even if it did, there is no reason it needs to  
 27 occur on an expedited basis.

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1       4. The FTC claims that there will be “significant judicial economy” associated  
2 with having the hearing on this motion for a stay pending appeal conducted at the same  
3 time as the hearing on its earlier motions for a stay and for a change of venue. While the  
4 motions have come to this Court from the same bankruptcy case, there is no reason they  
5 need to be heard on the same day. The FTC has submitted a separate brief on each motion  
6 for a stay pending appeal and Integretel has already filed a brief opposing the first motion.  
7 It will have to file a separate brief opposing this motion. The issues with regard to each  
8 motion are not identical, as in one order the bankruptcy court temporarily enjoined  
9 prosecution of the FTC’s enforcement action against Integretel and, in the other, based on  
10 additional hearings and findings and conclusions, it prevented the FTC and the Receiver  
11 from seeking contempt findings against Integretel.

12       5. The motion for change of venue does not afford any basis for having one  
13 hearing on the other two motions, as the change of venue motion is procedurally improper  
14 and substantively meritless. In addition, the court’s decision on changing venue does not  
15 depend on its decision regarding a stay pending appeal.

16       6. The FTC filed its motion on Friday, November 30 and seeks to require  
17 Integretel to file its opposition ten days later. During this period, Integretel has four  
18 motions set for hearing in the bankruptcy court on December 7, 2007. Integretel’s counsel  
19 is heavily committed on this and other matters and thus would find it burdensome to  
20 complete an opposition to the FTC’s motion before December 14, 2007, the date it would  
21 be due if the Motion is not granted.

22       7. I was given no advance notice of the filing of this Motion by the FTC and  
23 was not consulted with regard to whether Integretel would agree to an accelerated hearing  
24 or shortened briefing schedule.

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1 I declare under penalty of perjury that the foregoing is true and correct to the best of  
2 my knowledge.

3 Dated: December 5, 2007

4 /s/ Steven B. Sacks

5 Steven B. Sacks

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